

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-213289.3

**DATE:** February 27, 1984

**MATTER OF:** Evans Inc.--Request for Reconsideration

**DIGEST:**

1. Protests alleging defects on the face of solicitations filed with proposals do not constitute timely protests to the contracting agency.
2. Protester contends that appeal of untimely protests to procuring agency should be considered because they were filed with GAO within 10 days provided by the procuring agency. GAO Bid Protest Procedures may not be waived by the actions or representations of the procuring agency.
3. Protester has not shown any impropriety in procuring agency's refusal to consider proposal withdrawn by protester.

Evans Inc. (Evans) requests reconsideration of our decision in Evans Inc., B-213289, December 3, 1983, 83-2 CPD 635, in which we dismissed as untimely Evans' protests under requests for proposals (RFP) Nos. M6-Q54-83, M6-Q76-83, M6-Q73-83 and M6-Q74-83, issued by the Veterans Administration (VA). We found that Evans' protests against the solicitations' specifications and bonding requirements were untimely filed because Evans' protests to the VA were filed after the closing date for the receipt of initial proposals.

Evans now contends that it filed its protests against RFP's Nos. M6-Q76-83, M6-Q73-83 and M6-Q74-83 with its proposals. Evans has provided us with copies of two protest letters that it submitted with its proposals on RFP's Nos. M6-Q73-83 and M6-Q74-83. The dates of the letters are the same as the respective closing dates for the receipt of proposals. No protest letter regarding No. M6-Q76-83 has been provided.

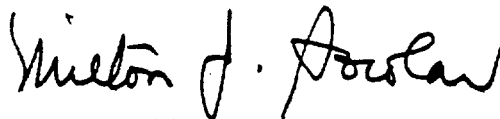
It is well settled that a "protest" alleging defects which are apparent on the face of a solicitation which is filed with a bid or included in a proposal will not be considered timely. Glatzer Industries Corp.--Reconsideration, B-209440.2, March 1, 1983, 83-1 CPD 211; Bell & Howell Company, B-203235.4, January 5, 1982, 82-1 CPD 10. Thus, Evans' protests regarding the alleged solicitation defects were untimely, even though filed with Evans' proposals.

The VA's September 19, 1983, denial of Evans' protests indicated that the denial could be appealed to our Office within 10 working days. Evans filed its appeal with our Office on September 29, 1983. Evans argues that we should consider its protests because it filed its appeal within the timeframe that the VA provided. We disagree. Our Bid Protest Procedures provide objective criteria for application by our Office to all protests before us and may not be waived by the actions or representations of a procuring agency. Jarrell-Ash Division, Fisher Scientific Company--Request for Reconsideration, B-209236.2, December 21, 1982, 82-2 CPD 562.

Evans contends that its proposal on RFP No. M6-Q54-83 should have been considered. However, Evans withdrew its proposal from consideration 3 days after submission because it wanted to use its "bonding power" to compete on other procurements. We therefore do not find the VA's refusal to consider Evans' proposal improper.

The decision dismissing the protests is affirmed.

Finally, Evans has inquired as to how to appeal this decision. The denial of a protest by our Office does not affect the right of a protester to have his rights in the matter judicially determined by a court having jurisdiction. See 28 U.S.C.S. §§ 1346, 1491 (Law. Co-op. 1977 & Supp. 1983), concerning matters cognizable in United States District Courts and the United States Claims Court.

  
for Comptroller General  
of the United States